



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 28, 2020

MEMORANDUM

FROM: W.C. McIntosh
Assistant Administrator
International and Tribal Affairs

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James B. Gulliford
Regional Administrator
Region 7

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Scott Mason IV
Director of Tribal Affairs
International and Tribal Affairs

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TO: Regional Administrators, Assistant Administrators

SUBJECT: Guidance on Tribal Consultation and Coordination during the COVID-19 Pandemic

During this time of the COVID-19 public health emergency, every government has faced the question of how to best protect the health and safety of their employees and partners. EPA's Office of International and Tribal Affairs (OITA) has been communicating with our tribal partners to assess the best way to continue our important work while also ensuring that tribal governments are able to meaningfully participate in consultation and coordination activities. We understand that many tribal governments have determined that the best option is to pause certain governmental operations, in addition to offering administrative leave or teleworking options to their environmental protection program staff.

The following guidance is being issued for use during the COVID-19 public health emergency and applies to the *EPA Policy on Consultation and Coordination with Indian tribes* (Consultation Policy). EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Consultation is a process of meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. The COVID-19 public health emergency does not affect or limit the applicability of the Consultation Policy to EPA's actions.

Consultation Approaches

During the COVID-19 public health emergency, OITA recommends the following consultation approaches across EPA:

- Where discretion is available, and where proposed actions or decisions may affect tribal interests, OITA recommends that EPA offices proceed with tribal consultation using flexibility in schedules and considering the diverse needs and capacities of tribes. This approach will ensure that meaningful input from tribal governments is received. This may include delaying the start of consultation or providing a longer period of time for tribal governments to provide input.
- If the schedule of an action that may affect tribal interests is not flexible, OITA recommends that EPA offices continue with consultation as planned. The lead EPA office should work to increase opportunities for meaningful participation.

Additional recommended approaches are detailed below.

Communications

As long as EPA offices are promoting teleworking for employees, physical mailings for consultation should be minimized. As an alternative, OITA recommends using the list of tribal leader email addresses published by the Bureau of Indian Affairs (BIA). This list is located at <https://www.bia.gov/tribal-leaders-directory> and can be downloaded in multiple formats. This list should be used judiciously and limited to high level communication such as tribal consultation.

For day-to-day communication, OITA manages Outlook distribution lists for Tribal Environmental Directors across the country. These can be found on Outlook under “TEDs_R1”, “TEDs_R2”, etc. We recommend that these lists be used for most email communication, as it will go directly to the heads of tribal environmental departments and have the most chance of being read.

Please work with the appropriate Tribal Program Managers to identify any additional outreach needed. Tribal Program Managers can advise on outreach such as follow-up communication to a tribal leader, tribal leader’s staff, and including appropriate inter-tribal consortia, in order to ensure awareness of the consultation opportunity.

Consultation Implementation

Consistent with the Consultation Policy, OITA continues to defer to Regional and Program Offices when deciding whether to conduct consultation and in what format. EPA should work early and often to engage with the affected tribes. However, during the COVID-19 outbreak, OITA recommends limiting face-to-face consultations to protect the safety of EPA and tribal representatives. Virtual consultation with tribal governments is appropriate and consistent with EPA’s tribal consultation policy.

EPA should be open to diverse and alternate mechanisms for engaging with tribes and receiving tribal comments. For example, if feasible, EPA could consider extending the length of the consultation period, offering different formats or increased opportunities for engaging with tribes, working proactively with affected tribes, and using voicemail or text mechanisms for tribes to submit comments. Additionally, it is recommended that Regions and Program Offices document their efforts to perform outreach on consultation opportunities.

Conclusion

In summary, EPA should consult with tribes in accordance with EPA's Consultation Policy and use any available flexibility to facilitate opportunities for meaningful tribal participation, and in particular consider extending the consultation period during the COVID outbreak. AAs and RAs should ensure their programs are complying with the Consultation Policy and encourage full evaluation of the available opportunities for tribal consultation.

At the end of the day, the health and wellness of our people and our country, and the opportunity for tribes to meaningfully participate in our ongoing work, are what should be driving our decisions. Thank you for your continued commitment to the EPA Tribal Program and your willingness to adapt during these times.

COPY: Deputy Regional Administrators
Deputy Assistant Administrators
Felicia Wright